

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

U.S. ETHERNET INNOVATIONS, LLC,

Plaintiff,

v.

ACER, INC.; ACER AMERICA
CORPORATION; APPLE, INC.; ASUS
COMPUTER INTERNATIONAL; ASUSTEK
COMPUTER, INC.; DELL, INC.;
FUJITSU, LTD.; FUJITSU AMERICA,
INC.; GATEWAY, INC.; HEWLETT
PACKARD CO.; SONY CORPORATION;
SONY CORPORATION OF AMERICA; SONY
ELECTRONICS INC.; TOSHIBA
CORPORATION; TOSHIBA AMERICA,
INC.; and TOSHIBA AMERICA
INFORMATION SYSTEMS, INC.,

Defendants,

INTEL CORPORATION; NVIDIA
CORPORATION; MARVELL
SEMICONDUCTOR, INC.; Atheros
COMMUNICATIONS, INC.; and
BROADCOM CORPORATION,

Intervenors.

No. C 10-3724 CW

ORDER ADDRESSING
MOTIONS TO SEAL
(Docket Nos. 750,
765, 769, 777,
795, 798 and 808
in 10-3724 and 449
and 454 in 10-
5254)

AND ALL RELATED CLAIMS,
COUNTERCLAIMS AND THIRD-PARTY
CLAIMS

The Court addresses the pending motions to seal in the above
captioned cases as follows:

I. Docket Nos. 750, 795 in Case No. 10-3724

On May 13, 2013, Plaintiff U.S. Ethernet Innovations, LLC
(USEI) moved to file under seal Exhibits A, C and E to the
declaration of Peter M. Jones in support of its motion regarding
sanctions based on party misconduct, as well as the portions of

1 its motion that directly quote or refer to those exhibits.¹
2 Docket No. 750. On June 6, 2013, USEI moved to file under seal
3 the entirety of its response to Defendants' motion for partial
4 summary judgment, the declaration of Peter M. Jones in support
5 thereof and all exhibits attached to the declaration. USEI
6 represents that the documents contain information that was
7 designated as confidential under the stipulated interim protective
8 order in this case and that it "expects that . . . one or more of
9 the defendants will file a declaration attempting to establish
10 that the designated information is sealable."

11 If a party wishes to file a document that has been designated
12 as confidential by another party or to refer to such information
13 in a memorandum or other filing, it is required to file and serve
14 an administrative motion seeking a sealing order. Civil Local
15 Rule 79-5(d). The designating party then must file a declaration
16 establishing that the document is sealable within seven days
17 thereafter. Id. If the designating party does not file its
18 responsive declaration, the document will be made part of the
19 public record. Id.

22
23 ¹ As of the date of this Order, Plaintiff has not filed in
24 the public record the Jones declaration itself or Exhibits B, D, F
25 and G, which are not at issue in the pending motion to seal.
26 Plaintiff has provided the Court with chambers copies of these
documents and has filed a certificate of service attesting that it
served copies of the motion, declaration and all exhibits on the
other parties in this case. Docket No. 753.

27 In the future, the parties shall properly efile in the public
28 docket all documents that they wish to offer in support of a
motion and that are not at issue in a concurrently-filed motion to
seal.

1 As of the date of this Order, no declaration in support of
2 these motions to seal has been filed.

3 Accordingly, the motions to seal are DENIED (Nos. 750, 795 in
4 10-3724). Within one day of the date of this Order, USEI shall
5 efile its unredacted motions, the Jones declarations and all
6 exhibits thereto in the public docket of this case.

7 II. Docket Nos. 765 in Case No. 10-3724, 449 in Case No. 10-5254

8 Intervenor Intel Corporation moves on behalf of all
9 Defendants and Intervenor to file under seal the following
10 documents offered in support of their motion for partial summary
11 judgment: (1) portions of the declaration of Itamar Sharoni;
12 (2) Exhibits 1, 2 and 3 to the Sharoni declaration; (3) the
13 declaration of Thomas Insley; (4) Exhibits A and B to the Insley
14 declaration; (5) portions of the declaration of Justin Constant;
15 (6) Exhibits A.1, A.3 and A.4 to the Constant declaration; and
16 (7) portions of their motion that contain information from these
17 other documents. Intel has submitted a declaration in support of
18 its motion to seal. See Stephens Decl., Docket No. 449-1.

19 These documents are connected to a dispositive motion. To
20 establish that these documents are sealable, Intel "must overcome
21 a strong presumption of access by showing that 'compelling reasons
22 supported by specific factual findings . . . outweigh the general
23 history of access and the public policies favoring disclosure.'" Pintos v. Pac. Creditors Ass'n, 605 F.3d 665, 679 (9th Cir. 2010)
24 (citation omitted). This cannot be established simply by showing
25 that the document is subject to a protective order or by stating
26 in general terms that the material is considered to be
27 confidential, but rather must be supported by a sworn declaration
28

1 demonstrating with particularity the need to file each document
2 under seal. Civil Local Rule 79-5(a).

3 In its declaration in support of the motion to seal, Intel
4 represents that the portions of the Sharoni declaration and its
5 exhibits that it seeks to seal contain "internal code names of
6 Intel's source code" and material related to its "source code
7 version control system." Stephens Decl., 2-3. It states, "This
8 material is not available to the public, and public release could
9 result in a competitive disadvantage for Intel and security
10 concerns for Intel and its customers." Id. It represents, "This
11 material reflects how Intel develops and manages its confidential
12 source code for its Ethernet components, which is widely used by
13 non-party members of the public," and that it "would be harmed if
14 this material were made public." Id. However, such broad and
15 generic statements do not meet the standard for sealing
16 information related to dispositive motions. Although Intel
17 generally claims that it would be "harmed" by public disclosure
18 and that this would result in a "competitive disadvantage" for it
19 and in "security concerns" for it and its customers, Intel
20 provides no specific facts or explanation of, for example, what
21 these security concerns are, how it would be hurt competitively
22 and why it expects that this would result from public disclosure
23 of this material.

24 Similarly, Intel has not sufficiently supported its request
25 to seal the information contained in the Insley declaration and
26 its exhibits. Intel seeks to redact the name of a third-party
27 customer of Intel "who wishes to maintain as confidential the
28 information about it discussed in the Motion." Stephens Decl. 3.

1 However, although Intel represents that it has notified this
2 third-party customer "of the use of and protections for its
3 confidential information as part of this motion," the third-party
4 customer has not submitted a declaration setting forth any reasons
5 that its identity should be maintained as confidential or that any
6 of its other information should be protected. Further, Intel has
7 not provided any compelling reason to keep this customer's
8 identity under seal. Intel also seeks to redact financial records
9 of its sales of accused products to this customer and others. In
10 support, it again makes generic statements that this information
11 "is closely guarded throughout the industry for competitive
12 reasons," and "is competitively very sensitive and its public
13 release could cause competitive harm to Intel and its third-party
14 customer." Id. at 4. Intel, however, fails to provide an
15 explanation of how it would suffer competitive harm or specific
16 facts to support its sealing request.

17 Intel has also not supported properly its request to seal a
18 portion of the Constant declaration and Exhibits A.1, A.3 and A.4
19 attached thereto. The Constant declaration contains some of the
20 same information at issue in the exhibits to the Insley
21 declaration and Intel has failed to support the sealing of it for
22 the reasons discussed above. In addition, although Intel
23 represents that the declaration contains information designated as
24 confidential by Intel's third-party customer and other parties to
25 this case, including USEI and HP, none of these have filed a
26 declaration in support of sealing this information. Similarly,
27 Intel states that Exhibit A.1 is a "confidential contract between
28 3Com and a third-party customer of Intel" and that both of these

1 parties have designated it as confidential under the protective
2 order in this case; however, neither has offered a declaration in
3 support of sealing and a blanket protective order is not
4 sufficient to permit the filing of documents under seal. See
5 Civil Local Rule 79-5(a). Further, Intel represents that Exhibit
6 A.3 is a "confidential declaration from the director of
7 intellectual property at Intel's third-party customer," which
8 "discusses a confidential agreement and related practices" and has
9 been designated as confidential under the protective order by the
10 third-party customer. Again, no supporting declaration has been
11 filed and designating the document as confidential under the
12 protective order is not sufficient to allow filing under seal.
13 Intel represents that Exhibit A.4 is a contract governing
14 intellectual property rights that it maintains as confidential for
15 competitive reasons and that public disclosure would cause it and
16 the other party to the contract "competitive harm." This showing
17 is insufficient for the reasons set forth above.

18 Finally, Intel seeks leave to file under seal the portions of
19 the motion for partial summary judgment that refer to the
20 information in the documents discussed above. Because Intel has
21 not provided sufficient reason to seal the underlying documents,
22 it also has not established that these portions of the motion
23 should be filed under seal.

24 Accordingly, Intel's motion to seal is DENIED (Docket Nos.
25 765 in Case No. 10-3724, 449 in Case No. 10-5254). Within one day
26 of the date of this Order, Intel shall efile these unredacted
27 documents in the public docket of this case. Alternatively, by
28

1 that time, it may withdraw the exhibits from the record and
2 disclaim its reliance on the redacted portions of its motion.

3 III. Docket No. 769 in Case No. 10-3724

4 Intervenor Nvidia Corporation moves to file under seal
5 portions of the declaration of Paul Sidenblad offered in support
6 of Defendants and Intervenor's motion for partial summary judgment
7 and Exhibits A through F attached thereto. Nvidia has filed a
8 declaration in support of the motion to seal. Gregorian Decl.,
9 Docket No. 769-1.

10 The Court previously denied Nvidia's first motion to seal
11 these documents, stating that, in its declaration in support of
12 its original motion, "NVIDIA only describes the subject matter of
13 the exhibits and makes conclusory statements that it considers the
14 material to be confidential or sensitive," and that "NVIDIA has
15 failed to state what harm it would experience if this material
16 were publicly disclosed or to provide any specific reasons,
17 supported by facts, that could outweigh the public policy favoring
18 public access to court filings." Docket No. 760, 1-2.

19 Nvidia still has failed to demonstrate that there are
20 compelling reasons to seal the documents at issue. Nvidia asserts
21 that Exhibits B, C and D are, respectively, "a confidential
22 summary of Nvidia's MACs," "a confidential technical specification
23 for the CK8G MAC," and a "confidential MCP1 MAC Reference Manual."
24 It states that these exhibits reflect "design and development" of
25 these products "by Nvidia's engineers," are "not available to the
26 public, and public release could result in a competitive
27 disadvantage for Nvidia." Gregorian Decl. ¶ 3.b-d. However,
28 Nvidia has not presented specific facts to show how making this

1 information available to the public would result in a "competitive
2 disadvantage" that outweighs the presumption of public access to
3 court documents; merely characterizing the documents as containing
4 trade secrets is insufficient, in the absence of facts in support
5 of this. Similarly, Nvidia states that Exhibit E is "an excerpt
6 from Nvidia's confidential source code version control system
7 showing changes made to Nvidia's driver source code," which it
8 does not make available to the public, customers or third parties.
9 Although it generally states that "public release could result in
10 a competitive disadvantage for Nvidia and security concerns for
11 Nvidia or its customers," Nvidia again makes only general,
12 sweeping statements, without providing specific facts or
13 explanation of the possible harm that might occur.

14 Finally, Nvidia represents that Exhibit A is "a confidential
15 agreement between 3com and Nvidia," which they agreed to keep
16 confidential "due to the proprietary nature of the information."
17 Gregorian Decl. ¶ 3.a. Nvidia also states that public disclosure
18 "would provide competitive information about Nvidia's business
19 practices and technology." Id. However, the parties' agreement
20 that a document should be kept confidential is insufficient to
21 establish that it should be sealed. Further, a general assertion
22 that it includes "proprietary" or "competitive information" is not
23 enough, in the absence of specific facts that show that this
24 information is worthy of protection from public access.

25 Accordingly, Nvidia has not established that there are
26 compelling reasons to seal Exhibits A through E to the Sidenblad
27 declaration. Nvidia seeks to seal the portions of the declaration
28 itself that "discuss information contained in and/or related to

1 the foregoing Exhibits." Gregorian Decl. ¶ 3.g. Because Nvidia
2 has failed to establish that the exhibits are sealable, it also
3 has not shown that the declaration itself should be sealed.

4 Accordingly, Nvidia's motion to seal is DENIED (Docket No.
5 769 in Case No. 10-3724). Within one day of the date of this
6 Order, Nvidia shall efile the Sidenblad declaration and Exhibits A
7 through E thereto in the public docket of this case.
8 Alternatively, by that date, Nvidia may withdraw the exhibits from
9 the record.

10 IV. Docket No. 777 in Case No. 10-3724

11 On May 28, 2013, Intel moved to file under seal Exhibit 2 to
12 the declaration of Seth M. Sproul in support of its opposition to
13 USEI's motion regarding sanctions. In its motion and supporting
14 declaration, Intel represents that Exhibit 2 consists of excerpts
15 from the deposition "testimony from third-party subpoena recipient
16 Richard Baker," which includes "confidential information of Mr.
17 Baker, defendant Hewlett-Packard's predecessor in interest (3Com)
18 and a third party customer of 3Com." Mot. at 2; see also Sproul
19 Decl. ¶ 2. Intel has also submitted a certificate of service
20 showing that it served a copy of Exhibit 2 upon all counsel of
21 record in this case. Docket No. 779 in 10-3724.

22 The Court previously warned all parties to this case that,
23 when filing motions to seal, they "shall make clear which party or
24 non-party has designated as confidential each purportedly sealable
25 document and, if relevant, shall provide proof of service upon
26 non-parties." Docket No. 760, 5. However, in the instant motion,
27 Intel has not identified the third-party customer of 3Com whose
28 confidential information is in Exhibit 2--although it appears to

1 be the same third-party customer addressed above--and has not
2 provided of service of the motion or exhibit upon Mr. Baker or the
3 third-party 3Com customer.

4 Within one day of the date of this Order, Intel shall provide
5 proof of service of the motion to seal, Exhibit 2, this Order and
6 Civil Local Rule 79-5 upon Mr. Baker and the third-party 3Com
7 customer. Within seven days thereafter, Mr. Baker and the third-
8 party 3Com customer must file and serve with the Court a
9 declaration establishing that Exhibit 2 is sealable, or must
10 withdraw the designation of confidentiality. The Court warns Mr.
11 Baker and the third-party 3Com customer that their failure to file
12 a declaration in support of sealing may result in Exhibit 2 being
13 made part of the public record, pursuant to Civil Local Rule 79-
14 5(d).

15 V. Docket No. 798 in Case No. 10-3724

16 Intervenor and Third Party Plaintiff Broadcom Corporation
17 moves to file under seal the entirety of Exhibit G to the
18 declaration of Jason H. Liss in support of its opposition to Third
19 Party Defendant Parallel Technology, LLC's motion to dismiss and
20 portions of its opposition brief that disclose the contents of
21 Exhibit G. Broadcom has submitted a declaration in support of its
22 motion to seal. See Liss Decl., Docket No. 798-1.

23 As noted above, Broadcom must demonstrate facts that show
24 that compelling reasons support the filing of these documents
25 under seal and outweigh the presumption of public access to court
26 records.

27 Exhibit G consists of a January 27, 2004 settlement and
28 license agreement between Broadcom and 3Com. In the declaration

1 in support of the motion to seal, Broadcom represents that this
2 agreement "contains highly sensitive Broadcom information," which
3 "includes, for example, (1) lump sum and ongoing royalty amounts
4 that Broadcom agreed to pay to 3Com, and (2) the structure and
5 scope of the technology licenses negotiated by the parties." Liss
6 Decl. ¶ 3. Broadcom asserts that public disclosure of the
7 agreement "would be prejudicial to Broadcom in negotiating
8 licenses and other agreements with other market participants."
9 Id. Broadcom also notes that article 13 of the agreement requires
10 it to keep the document confidential. Id. at ¶ 4.

11 The Court finds that Broadcom has established compelling
12 reasons to seal the lump sum and royalty amounts that Broadcom
13 agreed to pay 3Com in the agreement and the portions of the
14 opposition brief that refer to these amounts. However, Broadcom
15 has not offered compelling reasons to seal the remainder of the
16 material. In its declaration, it fails to address the entirety of
17 the licensing agreement and instead addresses only limited
18 portions of the document. For example, Broadcom provides no
19 reason that the five pages of provisions related to dispute
20 resolution should be sealed. Further, Broadcom does not make
21 clear what terms of the agreement actually describe the "structure
22 and scope of the technology licenses" and how public disclosure of
23 these terms would negatively impact its ability to negotiate
24 agreements with others.

25 Accordingly, the Court GRANTS in part and DENIES in part
26 Broadcom's motion to seal (Docket No. 798 in Case No. 10-3724).
27 Within one day of the date of this Order, Broadcom shall file
28 under seal unredacted versions of its opposition brief and Exhibit

1 G and shall file in the public record versions in which it has
2 redacted only the payment terms. Alternatively, by that date,
3 Broadcom may withdraw Exhibit G from the record.

4 VI. Docket Nos. 808 in Case No. 10-3724, 454 in Case No. 10-5254

5 Intel moves on behalf of all Defendants and Intervenors to
6 file under seal a portion of their reply brief in support of their
7 motion for partial summary judgment and the entirety of Exhibit
8 A.1 to the declaration of Carmen Bremer in support of the reply.

9 Exhibit A.1 contains an opposition brief filed by 3Com in a
10 separate earlier case, 3Com Corp. v. Realtek Semiconductor Corp.
11 Case No. 03-2177 (N.D. Cal.), in response to a motion for partial
12 summary judgment there. The court granted permission to file this
13 brief under seal in the prior litigation. Thus, the Court finds
14 compelling reasons to file it under seal here.

15 Intel represents that it seeks to file under seal portions of
16 the reply brief that refer to the contract between 3Com and the
17 third-party customer of Intel discussed above and another contract
18 between two parties to this litigation. Intel makes only general
19 averments that these entities maintain these agreements as
20 confidential and that public release would cause them competitive
21 harm. Further, none of the other entities that are party to the
22 contract have filed declarations in support of the motion to seal.
23 Because Intel has not provided specific facts that show compelling
24 reasons to maintain this information under seal, the Court DENIES
25 the motion to seal to the extent that Intel seeks to seal portions
26 of the reply brief.

27 Accordingly, the Court GRANTS in part and DENIES in part
28 Intel's motion to seal (Docket Nos. 808 in Case No. 10-3724 and

1 454 in Case No. 10-5254). Within one day of the date of this
2 Order, Intel shall file under seal Exhibit A.1 and shall file in
3 the public record an unredacted version of the reply brief.
4 Alternatively, by that date, Intel may disclaim reliance on the
5 redacted portions of its reply brief.

6 IT IS SO ORDERED.

7
8 Dated: August 14, 2013


CLAUDIA WILKEN
United States District Judge